

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

OFF ORIGINAL



SDMS DocID

2057906

SUBJECT: AMP De Minimis Settlement

FROM: Carlyn Winter Prisk (3HS11)
Investigator

TO: Joan Johnson (3RC42)
Senior Assistant Regional Counsel

Larry Miller, Chief (3HS11)
PRP Investigation and Site Information Section

On September 26, 2000, EPA met with Charles Shultz, Esquire, Senior Counsel to Tyco Electronics, and Tim Bergere, Esquire, of Montgomery, McCracken, Walker & Rhoads, both representing AMP Incorporated, a *de minimis* settlor at the Malvern TCI Superfund Site. Under discussion at that meeting was AMP's request for a revision in its attributed volume at the Site and a corresponding reduction in its settlement amount. AMP agreed to participate in the *de minimis* settlement under the assumption that EPA would consider and ultimately revise the volumetric share attributable to AMP. AMP's first *de minimis* payment was made based on the lower volumetric share.

AMP has presented several argument in its efforts to persuade EPA to revise its volumetric share at the Site. The first argument focused on EPA's use of August 1, 1975 as the date before which all waste accepted at the Site was disposed of at the FDA. AMP argued that a large portion of its waste was hauled to the Site just before the cut-off date (July 29, 1975) and due to the processing time by Chemelene prior to disposal could not have been disposed of at the FDA prior to August 1. I do not believe that EPA should re-evaluate AMP's volumetric share based on this argument. EPA established this cut off based on information from Chemelene that it ceased disposal in the FDA some time in August 1975; for clarity and ease of computation, EPA chose August 1, 1975. The cut off date of August 1, 1975 was applied across the board to all PRPs, *de minimis*, *de maximus*, and *de micromis*. AMP has not distinguished themselves from other *de minimis* parties to the extent that EPA should establish a new cut off only for it. To remove the July 29, 1975 shipment from AMP's volumetric share would likely necessitate a revision of the cut off date for all PRPs.

AMP's second argument focused on EPA's use of drums rather than weight to calculate the volumetric share. In particular AMP believes that EPA should use the "Gross Weight" reported on a receiving record for July 29, 1975 rather than the recorded 20 drums. In order to determine if AMP's weight v drums argument held any merit, I reviewed a sample of transaction

documents for other *de minimis* PRPs. In all, I selected and reviewed the transaction documents of 27 *de minimis* PRPs, representing approximately 10% of the *de minimis* parties. ~~OFF~~ **ORIGINAL** parties. 6 PRPs, **Eaton Corp, Franklin Mint, Narco Avionics, KSM Fastening, Petrocon, and Emeco**, had transactions similar to AMP, specifically, receiving reports in which both the gross weight and drum count were specified. In each of the 6, EPA used the drum count to calculate the party's volumetric share. In an additional 7 parties, **Stein Seal Company, Scott Paper Corp, Princo Industries, Inc., Gas Springs, Devilbiss Company, and Brooks Instruments**, at least one transaction was supported by other documents (e.g. manifests, invoices) reflecting the estimated weight and drum count. In each of these 7 instances, EPA used the drum count to calculate the volumetric share. EPA has acted consistently in relying on drums rather than weight in determining volumetric share. I recommend rejecting AMP's argument that EPA should utilize weight rather than drums when both are available.

In its third argument, offered in support of its weight v. drums argument, AMP stressed that the drums were not full and thus EPA overestimated AMP's volumetric share. I undertook a review of the challenges to EPA's volumetric ranking raised by other PRPs in order to determine if any other parties had successfully raised a similar challenge.

Numerous parties, both *de minimis* and *de maximus*, asked EPA to reduce their volumetric share based on information which allegedly demonstrated that the drums were either not full or were smaller than 55-gallons. For those parties in which the argument was raised, I reviewed the transaction documents as well. Based on this review, I identified several other parties for which EPA used the drum count rather than the weight information, when both were available. These parties were **Plymouth Tube Company, Superior Tube and A.S. Koch**. EPA's interpretation of the transaction documents was consistent among the reviewed parties - when weight and drum count were both provided EPA used the drum count. In other cases, EPA reduced the volumetric share based on review of transaction documents which clearly illustrated that the drums were not full or were not 55-gallons in size. For example, **Armstrong** provided purchase orders which contained specific volume amounts. Based on the number of drums, EPA determined that each drum contained 50 gallons rather than 55. **Armstrong's** volumetric share was adjusted to reflect the change. In the case of **Graphic Packaging and Herman Goldner**, EPA adjusted the volumetric share based on clear information that the drums were 30 gallons in size. In the case of **Budd Company and Chronolog**, a Chemelene invoice noted that the drum contained a specific number of gallons of material. EPA reduced the volumetric share based on this information as well.

AMP has not provided specific information which demonstrates that EPA erred in assuming that the drums were full. AMP supplied the affidavit of Alan G. Davis, an AMP employee, to support the argument that the drums were not full. Mr. Davis' affidavit is not specific concerning volume of solvents contained in the drums attributed to AMP: rather, he states that it "did not always fill a drum." Because the information in the affidavit is so vague it is not sufficient to change AMP's volumetric share.